

ADAM P. FAUST, *et al.*,

V.

THOMAS J. VILSACK, in his official capacity as Secretary of Agriculture, *et al.*,

Defendants.

Civil Action No. 21-cv-548-WCG

In accordance with the Court's August 23, 2021, Order, ECF No. 66, Defendants respectfully submit this status report.

1. In this action, Plaintiffs challenge Section 1005 of the American Rescue Plan Act of 2021. Because Plaintiffs are a member of the classes certified by the District Court for the Northern District of Texas in *Miller v. Vilsack*, 4:21-cv-595 (N.D. Tex.), that similarly challenge the same statutory provision, Defendants moved for, and the Court granted, a stay of this action pending the outcome of the *Miller* litigation. *See* ECF No. 66.
2. The *Miller* class litigation remains ongoing. On September 22, 2021, the *Miller* court issued a scheduling order pursuant to which the parties will file cross-motions for summary judgment by March 11, 2022, and complete briefing on those motions by April 1, 2022.
3. On October 13, 2021, the *Miller* court denied a motion by plaintiffs in several other cases¹ to opt out of the certified classes, concluding that the classes, certified under

¹ Plaintiffs in this case did not join the motion to opt out.

Rule 23(b)(2), are mandatory classes that afford members no opportunity to opt out. ECF No. 100, *Miller*.

4. Because the *Miller* case is still pending, and Plaintiffs remain members of the classes certified in that case, the presumption against duplicative litigation and the interests of judicial efficiency weigh in favor of continuing the stay.

Dated: February 23, 2022

Respectfully submitted,

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